IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 4921 of 2007(J)

PETITIONER:

SURESHKUMAR, S/O. KUMARAN, AGED 31 YRS,
KOCHUPARAMBIL HOUSE, THOTTAKKADU KARA,
THOTTAKKADU VILLAGE, KOTTAYAM DISTRICT.

BY ADV. SRI.T.K.AJITHKUMAR (VALATH)

RESPONDENTS:

THE SUB INSPECTOR OF POLICE,
VAKATHANAM POLICE STATION, VAKATHANAM,
KOTTAYAM DISTRICT.

BY GOVT. PLEADER SRI. S.U. NAZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/05/2007, ALONG WITH WPC NO. 7057 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

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W.P.C.Nos. 4921 of 2007 J &
7057 of 2007 M

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Dated this the 29th day of May, 2007

JUDGMENT

Is the offence under Section 63 of the Copyright Act a cognizable one? Are the police justified in these two cases in reckoning the offence under Section 63 of the Copyright Act as a cognizable offence and proceeding further? These are the questions that are raised in these two writ petitions.

2. The penal provision appears in Section 63 of the Copyright Act. The offence is punishable with imprisonment for a term, "which shall not be less than six months, but which may extend to three years and with fine". The Copyright Act as amended does not anywhere specifically refer to cognizability for the purpose of investigation. We therefore have got to fall back on the schedule to the Code of Criminal Procedure. The schedule to the Code of Criminal Procedure shows that if the offence under other laws is punishable "with imprisonment for three years and upwards, but not more than 7 years", the offence will be cognizable and non-bailable. If on the

contrary, the offence is punishable with imprisonment for less than 3 years or with fine only, the offence will be non-cognizable and bailable and can be tried by any Magistrate. The short question is whether the offence under Section 63 will fall in the former category or the latter.

3. A plain reading of the stipulations in the Schedule shows that if the offence is punishable with imprisonment for 3 years and upwards, but not more than 7 years, it must be reckoned as cognizable. Section 63, according to me, is clearly punishable with imprisonment for 3 years and in these circumstances the offence has to be held to be cognizable. No binding precedent is brought to my notice. But it is stated that in **Jithendra Prasad Singh** v. **State of Assam** (2003 (26) PTC 486 (Gau.) and in **Dr.A.K. Mukherjee** v. **State and another** (1994 (2) Arb. LR 77 (Delhi) the High Courts have taken the same view. These decisions are not placed before me.

4. I do not think it specifically necessary to go to any precedent. The language of provisions of Section 63 of the Copyright Act and the language of the relevant entries in the Schedule to the Code of Criminal Procedure make the position crystal clear. Part II of the Schedule to the Code classifies the offences as cognizable/non-cognizable and bailable/

non-bailable and prescribes the forum for trial depending on the gravity of the punishment as ascertained from the nature of the sentence imposable for the offences under such other laws. Parliament has divided all offences under special laws into three categories. They are:

> 1. punishable with death, imprisonment for life, or imprisonment for more than 7 years.
>
> 2. punishable with imprisonment for 3 years, and upwards but not more than 7 years.
>
> 3. punishable with imprisonment for less than 3 years or with fine only.
>
> (emphasis supplied)

In simple language this means that there can be three categories of cases depending upon the maximum sentence which can be imposed. The first one deals with the offences which are punishable with imprisonment for more than 7 years. Those offences, for which punishment imposable is 7 years, do not come within this first clause. Only offences for which more than 7 years (not 7 years only) can be imposed do come within this first clause.

5. The second class is the class of offences in which punishment of imprisonment for 7 years and below are imposable. If punishment imposable is 7 years and below upto three years, the offences would fall

within the second category. The Parliament which used the expression "for more than 7 years" to identify the first category had very cautiously used the words "3 years and upwards, but not more than 7 years" to identify the second category. The offences punishable with imprisonment for 3 years upto 7 years, both inclusive, will fall under this second category.

6. The third category is that of the offences punishable with imprisonment for less than 3 years or fine. Those punishable with imprisonment for three years do not come within this category evidently.

7. The offence on hand, the one under Section 63 of the Copyright Act, is punishable with imprisonment for a period of 3 years. There can therefore be no doubt that this falls under category 2 referred above and is consequently cognizable. No contra principle or precedent has been pressed into service before me. The attempt to rely on the decision of the Supreme Court in **Rajeev Chaudhary** v. **State (NCT) of Delhi** (AIR 2001 SC 2369) cannot at any rate help the petitioners as the language used in the proviso to Section 167(2) is totally different from the language employed in the Schedule to the Code of Criminal Procedure.

8. In these circumstances I find no merit in the contention that the offence under Section 63 of the Copy Act is not cognizable and that

consequently the registration of the crime and the investigation undertaken in these cases are not justified and legal.

9. The learned counsel for the petitioner in WPC 7057 of 2007 submits that knowledge is an essential part of the offence under Section 63 and that the accused in that case did not have the requisite knowledge at any rate. That question about existence of knowledge cannot be sought to be resolved in proceedings under Article 226/227 of the Constitution. That disputed question of fact will have to be considered and appropriate decisions taken in the course of investigation and trial.

10. These Writ Petitions are accordingly dismissed.

(R. BASANT)
Judge

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